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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION No. 213 OF 1997

Mrs. Motabir Jahan Shaikh)
Aged 28 years, Occu.-)
Household, Residing at)
Chawl No. K/4, Room No.)
68-5/8, Colaba Plot, New)
Basti, Jhula Maidan,)
Jogeshwari (E),)
Mumbai 60.) ... Petitioner

Vs.

1. Mr. Shaikh Ahmed)
Shaikh, Age 33 years,)
Occu. service, R/a. Railway
Quarters, Behind Rly)
hospital, Igatpuri 422031)
District Nasik.)

2. State of Maharashtra) ... Respondents

Mr. Madhav Jamadar, Advocate for
petitioner.

Mr. K. V. Saste, APP for Respondent-State.

CORAM: J. N. PATEL,
AND
A. A. SAYED, JJ.

DATE : APRIL 26, 2007.

ORAL JUDGMENT:

. Heard. None present for the respondent / husband. This Revision Application is filed by the wife, whose application for maintenance came to be rejected by the Family Court in Application No. E-758/1993, vide judgment dated 22-9-1995.

2. The applicant was required to file an application under S. 125 Cr.P.C. against respondent No.1 for maintenance, as she was driven away from the matrimonial home, after being treated with cruelty, and thereafter refused and neglected to maintain her in spite of the fact that he is working at Igatpuri, in Railway department and at that time, he was getting salary of Rs.3,500/- per month.

3. The factum of marriage having been solemnised at Bombay between the parties as per Muslim Law is not disputed by the respondent husband. It is contended by him that he is not getting salary of Rs.3,500/- and he is having liability to maintain his widow mother and one sister. On the other hand, petitioner's father is having big business of sarees and working in Karuna Company and that petitioner is earning Rs.250/- to Rs.300/- per month by stitching the clothes and selling sarees. Parties led their respective evidence and the learned Family Court held that the petitioner has failed to prove that respondent has neglected her without any reason and she was treated with cruelty and there is case made out for granting maintenance.

4. We have gone through the evidence on record.

It appears that the learned Family Court Judge has laid too much emphasis in respect of the evidence of the petitioner, particularly in the cross examination, where she has deposed to the effect "it is true that the respondent is ready to accept me and ready to take me to his matrimonial house but I have not went alongwith the respondent to my matrimonial house, because I was afraid that the respondent will again beat me. It is true that the respondent tried for many times to take me back to my matrimonial home, but I refused to go to my matrimonial home. It is true that the respondent has send Rs. 7/- by money order to return back to my matrimonial home, but I refused to accept the said money order."

5. We find that the learned Family Court has not considered the evidence of the petitioner in proper perspective. If the evidence of petitioner is considered as a whole, it clearly makes out a case that the petitioner was treated with cruelty and driven out of her house and the talk on the part of the petitioner to get her back was not bona fide. In the back drop of the fact that the petitioner was treated with cruelty, the offer of the respondent to take her back, was rightly declined by the respondent, as she was justified in having an apprehension that

she will be treated with cruelty, when she again goes back to the house of respondent. On the basis of the cruel treatment, she has left the house of respondent during her stay with him, in the initial period of her marriage life. This fact has been taken as admission on the part of the petition of having refused to join company of her husband, and therefore, the learned Judge of the Family Court came to the conclusion that the husband has not refused and neglected to maintain her, or treated her with cruelty.

6. The contention of the petitioner that the father of the respondent/wife is a rich and also working in a Karuna Co., that itself does not exonerate the respondent/husband from paying maintenance to the wife. The respondent/husband has not denied that he is working in the railway depart but has stated that he does not earn Rs.3,500/-. Further he has deposed to the effect that he has to maintain his widow mother and wife.

7. The petitioenr/wife had claimed a partly sum of Rs.500/- per month from the respondent, which is not even sufficient to her to meet the basic needs, therefore, we allow the application filed by the

petitioner/wife.

8. The respondent/husband shall pay to the petitioner/wife a sum of Rs.500/- per month from the date of the application. Considering the meagre amount claimed by the petitioner for maintenance, probably due to improper advise that the limit for claiming maintenance under S. 125 Cr.P.C. is Rs. 500/- per month which has been increased by amendment, she has only claimed sum of Rs. 500/- per month by way of maintenance, which was the upper limit, prior to amendment. We therefore, grant liberty to the petitioner wife to move the Family Court for enhancement of maintenance, if so advised. Revision Application is allowed with costs, which we quantify as Rs.5,000/-. Revision Application stands disposed off accordingly.

Sd/-
[A. A. SAYED, J.]

Sd/-
[**J. N. PATEL, J.]**